

AUG 26 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996:)	
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other)	
Customer Information)	

**COMMENTS OF SBC COMMUNICATIONS INC. ON PETITION FOR
RECONSIDERATION OF CLARIFICATION ORDER**

SBC Communications Inc. ("SBC"), on behalf of its wireless subsidiaries,¹ hereby files these Comments with regard to the Petition of GTE Service Corporation ("GTE"), requesting reconsideration of the Order released by the Common Carrier Bureau ("Bureau") on May 21, 1998.²

GTE states in its Petition that the Clarification Order appears to hold that a carrier can use customer proprietary network information ("CPNI") to market a bundle of telecommunications service and equipment only if the carrier can establish that it previously provided the customer's current handset. GTE presents many well-reasoned arguments why this restriction is not required by law and why it conflicts with sound public policy. SBC supports GTE's Petition in

¹ Southwestern Bell Mobile Systems, Inc., Southwestern Bell Wireless, Inc., and Pacific Bell Mobile Services.

² Order, DA 98-971 (released May 21, 1998) ("Clarification Order"), clarifying the Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998, 63 Fed. Reg. 20326 (published April 24, 1998) ("CPNI Order").

both respects. Consequently, it urges the Bureau to clarify that, due to the relationship between Commercial Mobile Radio Services ("CMRS") providers and the handsets of all their customers, the origin of the handset is irrelevant to the carrier's ability to use CPNI to market a bundle of service and equipment.³

SBC, however, strongly opposes GTE's suggested requirement that carriers implement mechanisms to track which customers obtained their handsets from the carrier or one of its agents. Imposition of such a requirement would be flatly inconsistent with the irrelevance of the handset's origin.

As GTE indicates, with regard to the wireless carrier's use of CPNI to provide its customer a handset, "it is statutorily irrelevant where a particular customer may have obtained the CPE necessary to utilize the carrier's service."⁴ Regardless of the source of the handset, the handset falls within the existing carrier-customer relationship. SBC fully concurs with GTE's assertion that "customers expect CMRS carriers to treat all compatible handsets as part of the provision of service" and that "it is the standard practice of the CMRS industry . . . to support all compatible handsets without regard to whether a particular customer obtained a handset from his or her current CMRS provider or elsewhere."⁵ GTE details the establishment of the relationship between the wireless carrier and the customer's handset, and the carrier's ongoing relationship

³ SBC has urged the Commission to reconsider Rule 64.2005(b)(1) and maintains that such reconsideration is the appropriate action for the Commission to take. Petition for Reconsideration of SBC Communications Inc., filed May 26, 1998, pp. 2-8. These comments do not constitute a waiver or departure from the position stated in that petition.

⁴ GTE Petition, p. 4.

⁵ Id., p. 5.

with the handset—regardless of the source of the handset.

In the Clarification Order, the Bureau emphasizes that carriers making bundled offerings of telecommunications service and equipment possess information about the customer's equipment that the carrier derives independently from CPNI. CMRS providers, however, have "independently derived" information about the handsets of their entire customer base, regardless of the origin of those handsets. CMRS carriers know the electronic serial number ("ESN") of each wireless customer's handset, which can be used to identify the manufacturer, whether the handset is digital or analog, and sometimes the model. CMRS providers also have information derived from servicing the handset by programming it and activating it on the carrier's system. Further, CMRS carriers have an existing and ongoing relationship with all their customers regarding their handsets; indeed, under Commission rules, the customers' handsets are considered to be operating under the carrier's license and the carrier is responsible for operational control over the handsets.⁶

Since CMRS providers have "independently derived information" on and an ongoing relationship with the handsets of all their customers, the original source of the handset is irrelevant to the ability of the carrier to use CPNI to market to its customers a bundle of service and equipment.

The Clarification Order explicitly treats handsets sold by the carrier's agent the same as handsets sold directly by the carrier.⁷ This reinforces the irrelevance of the source of the handset

⁶ 47 C.F.R. Section 222.927.

⁷ Clarification Order, n. 12.

with regard to the carrier's ability to use CPNI to market equipment and service to its customers. The information the SBC wireless carrier has about equipment sold by its own agents is identical to the information it has about equipment that the customer bought from a third party and brought to the carrier for activation with the carrier's wireless service. In both cases, the customer's account reflects the ESN of the handset, the carrier programmed and activated the handset on its wireless service, and the handset is operating under the carrier's license. Since the wireless carrier has the same independently derived information on the equipment of both types of customers, allowing CPNI to be used to market bundled equipment/wireless service offerings to customers who obtained their handsets from the carrier's agents, but not to those who obtained their handsets elsewhere, would be irrational and would serve no legitimate interest.

A requirement that would force the carrier to discriminate among its customers based on where they bought their equipment would make no sense. The source of the handset is meaningless. What is important is that the carrier makes the equipment work with the service provided, both initially and on an ongoing basis; the carrier has independently derived information on all handsets operating on its system: the handsets are operating under the carrier's license and the carrier has operational control over the handsets. Wireless carriers do not have merely general knowledge that all wireless customers have handsets; wireless carriers have specific information on the handsets of all of their customers. For these reasons, the customer's current wireless service provider should be regarded as the existing equipment provider, regardless of where the customer may have originally obtained the equipment.

Accordingly, the Commission should clarify that the Clarification Order permits a CMRS carrier to use CPNI to offer its customer a bundle of equipment and service, regardless of

whether the customer obtained his or her current handset from the carrier. The Commission should decline to require that CMRS carriers implement a mechanism to track whether customers obtained their current handsets from the carrier or its agents or a third party. Inasmuch as the source of the handset is irrelevant, a requirement to track the source would constitute meaningless and harmful regulation, contrary to the statute and the reality of the relationship between wireless carriers and the handsets of all their customers.

Respectfully submitted,

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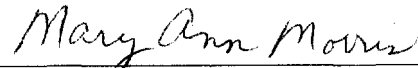
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CERTIFICATE OF SERVICE

I, Mary Ann Morris, hereby certify that the foregoing, "COMMENTS OF SBC COMMUNICATIONS INC. ON PETITION FOR RECONSIDERATION OF CLARIFICATION ORDER," in CC Docket No. 96-115 have been filed this 26th day of August, 1998 to the Parties of Record.

A handwritten signature in cursive script that reads "Mary Ann Morris". The signature is written in dark ink and is positioned above a horizontal line.

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